

HOUSE BILL No. 1349

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-8-1-11; IC 11-10-3; IC 11-12-4-1; IC 34-30-2-39.8; IC 35-52-11-4.

Synopsis: Health care for incarcerated women. Requires the department of correction (department) to provide free and unlimited access to toilet paper, tampons, and pads to any incarcerated woman held by the department. Requires the department to administer certain medications for women suffering from an active substance use disorder during pregnancy. Requires the department to create and implement written policies that do the following: (1) Provide women with access to: (A) conventional beds; or (B) bottom bunks; during pregnancy or the six weeks following the delivery of a child, as applicable, in order to minimize the risk of serious injury in the event of a fall. (2) Require the timely reporting of certain obstetric emergencies to a physician or qualified medical professional. (3) Comply with specified requirements concerning the use of restraints, shackles, and restraint techniques on pregnant and postpartum women. (4) Require correctional officers to remain outside of delivery rooms in certain instances. Provides the department with rulemaking and emergency rulemaking authority for the purpose of creating and implementing certain practices and policies. Requires the department to adopt specified standards that apply to county jails. Provides that: (1) agents; (2) employees; and (3) persons contracted to work on behalf of the department; are immune from civil liability, damages, and punitive damages, for certain acts or omissions. Specifies an exception. Makes conforming amendments.

Effective: July 1, 2021.

Pack

January 14, 2021, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1349

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 11-8-1-11 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2021]: **Sec. 11. "Postpartum period", for purposes of**
4 **IC 11-10-3-3.5, has the meaning set forth in IC 11-10-3-3.5(a).**
5 SECTION 2. IC 11-10-3-2.8 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2021]: **Sec. 2.8. (a) The department shall provide free and**
8 **unlimited access to toilet paper, tampons, nursing pads, and**
9 **menstrual pads to any incarcerated woman held by the**
10 **department.**
11 **(b) The department may adopt rules under IC 4-22-2, including**
12 **emergency rules under IC 4-22-2-37.1, to implement this section.**
13 SECTION 3. IC 11-10-3-3 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 3. (a) Necessary**
15 **prenatal, and postnatal, and postpartum care and treatment shall be**
16 **provided to women who are pregnant consistent with acceptable**
17 **medical practice and standards and must include the following: When**



possible; arrangements shall be made for children to be born in a hospital outside the correctional facility. If a child is born in a correctional facility, this fact may not be mentioned on the birth certificate.

(1) The administration of methadone or buprenorphine, as determined by a physician or qualified medical professional, for a woman with an active opioid use disorder during pregnancy.

(2) The creation and implementation of written policies that do the following:

(A) Provide women with access to:

(i) conventional beds; or

(ii) bottom bunks;

during pregnancy or the six (6) weeks following the delivery of a child, as applicable, in order to minimize the risk of serious injury in the event of a fall.

(B) Require the timely reporting of bleeding, extreme pain, leaking fluid, eclamptic seizures, or any other obstetric emergency to a physician or qualified medical professional.

(C) Restrict the use of restraints and shackles on pregnant and postpartum women in a manner that complies with section 3.5 of this chapter.

(D) Require correctional officers to remain outside of any room where a child is being delivered unless:

(i) the mother; or

(ii) a qualified medical professional;

asks for a correctional officer to be present.

(b) The department may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this section.

(c) Nothing in this section shall be construed to require any:

(1) agent of the department;

(2) employee of the department; or

(3) person contracted to work on behalf of the department; to risk their health or safety in order to implement this section.

(d) Except as provided in subsection (e), no person shall be subject to civil liability or damages, including punitive damages, for any act or omission that is consistent with the requirements of this section and undertaken in good faith. If a person is granted civil immunity under this subsection, no other person may be subject to civil liability or damages, including punitive damages, by reason of an agency relationship between the parties.

(e) The immunity described in subsection (d) does not apply to



1 an act or omission that constitutes gross negligence or willful and
2 wanton misconduct.

3 SECTION 4. IC 11-10-3-3.5 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2021]: Sec. 3.5. (a) As used in this section, "postpartum period"
6 means the six (6) week period immediately following the delivery
7 of a child.

8 (b) This section applies only to pregnant and postpartum women
9 who are incarcerated and being held at a facility affiliated with the
10 department.

11 (c) Subject to subsection (d), a rebuttable presumption
12 prohibiting the use of shackles or restraints shall be established for
13 the following individuals:

- 14 (1) An inmate being transported to a hospital or medical
15 facility during labor.
- 16 (2) An inmate undergoing any phase of labor.
- 17 (3) An inmate in the process of delivering a child.
- 18 (4) An inmate during her postpartum period.

19 (d) The rebuttable presumption described in subsection (c) does
20 not apply to an inmate who presents:

- 21 (1) an immediate and serious threat of harm to:
22 (A) herself;
23 (B) department staff; or
24 (C) any other third party; or
25 (2) a substantial flight risk that cannot be reasonably deterred
26 or prevented by other means.

27 (e) If, prior to labor, the use of restraints or shackles are
28 necessary to ensure the safety of the inmate, department staff, or
29 other third parties, only the least restrictive means to secure the
30 inmate may be used.

31 (f) A restraint, shackle, or restraint procedure meets the least
32 restrictive requirement described in subsection (e) if all of the
33 following conditions apply:

- 34 (1) The restraint, shackle, or restraint technique mitigates the
35 possibility of adverse medical consequences for the inmate or
36 her fetus as determined by a qualified medical professional.
- 37 (2) A qualified medical professional was consulted about the
38 use of a specific restraint, shackle, or restraint technique prior
39 to the application of the restraint, shackle, or restraint
40 technique.
- 41 (3) Written approval concerning the use of the restraint,
42 shackle, or restraint technique was obtained from the warden



or a person of comparable executive authority prior to the application of the restraint, shackle, or restraint technique.

(4) Correctional officers are available to remove any applied restraint or shackle upon request by qualified medical personnel during the course of a medical procedure or examination.

(g) Notwithstanding any other law or provision, the following restraints and restraint techniques are prohibited:

(1) Abdominal restraints.

(2) Four (4) point restraints.

(3) The placement of a pregnant inmate in a face down position.

(4) Any leg restraint, leg shackle, or restraint procedure that increases the risk of a forward fall.

(5) Any leg restraint, leg shackle, or restraint procedure that links one (1) inmate to another inmate.

(6) Any other restraint or shackle that could result in adverse medical consequences for an inmate or her fetus as determined by a qualified medical professional.

(h) The requirements specified in this section shall be conspicuously displayed in every location where medical care is provided to female inmates.

(i) The department may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this section.

(j) Nothing in this section shall be construed to require any:

(1) agent of the department;

(2) employee of the department; or

(3) person contracted to work on behalf of the department; to risk their health or safety in order to implement this section.

(k) Except as provided in subsection (l), no person shall be subject to civil liability or damages, including punitive damages, for any act or omission that is consistent with the requirements of this section and undertaken in good faith. If a person is granted civil immunity under this subsection, no other person may be subject to civil liability or damages, including punitive damages, by reason of an agency relationship between the parties.

(l) The immunity described in subsection (k) does not apply to an act or omission that constitutes gross negligence or willful and wanton misconduct.

(m) A person who knowingly or intentionally violates this chapter commits unlawful application of a restraint or restraint technique, a Class A misdemeanor.



SECTION 5. IC 11-12-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. (a) The department shall adopt under IC 4-22-2 minimum standards for county jails governing:

- (1) general physical and environmental conditions;
- (2) services and programs to be provided to confined persons; and
- (3) procedures for the care and control of confined persons that are necessary to ensure the health and safety of confined persons, the security of the jail, and public safety.

However, the department may not adopt any standard that prohibits the placement of more than one (1) prisoner in a prisoner cell that has thirty-five (35) square feet or more of floor space per prisoner.

(b) The standards must be sufficiently flexible to foster the development of new and improved practices and to accommodate local needs and circumstances. The standards must be consistent with the laws of Indiana and the rules of the state department of health and the fire prevention and building safety commission.

(c) Standards adopted under this section must comply with the specifications and requirements described under:

- (1) IC 11-10-3-2.8;**
- (2) IC 11-10-3-3; and**
- (3) IC 11-10-3-3.5.**

~~(c)~~ **(d)** The commissioner shall select a committee of not less than five (5) county sheriffs to consult with the department before and during the drafting of the proposed minimum standards. County sheriffs shall be selected from the various classes of counties to ensure that densely, moderately, and sparsely populated counties are represented. Each county sheriff is entitled to the minimum salary per diem as provided in IC 4-10-11-2.1 for each day engaged in the official business of the committee and to reimbursement for traveling and other expenses, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

~~(d)~~ **(e)** At least sixty (60) days before setting the date for a public hearing under IC 4-22-2, the department shall forward copies of the proposed minimum standards to each county sheriff and each board of county commissioners and shall solicit their views and suggestions.

SECTION 6. IC 34-30-2-39.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 39.8. (a) IC 11-10-3-3 (Concerning prenatal, postnatal, and postpartum care and counseling by the department of correction).**



1 **(b) IC 11-10-3-3.5 (Concerning the use of restraints on pregnant**
2 **and postpartum inmates).**
3 SECTION 7. IC 35-52-11-4 IS ADDED TO THE INDIANA CODE
4 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2021]: **Sec. 4. IC 11-10-3-3.5 defines a crime concerning the use**
6 **of restraints on pregnant and postpartum inmates.**

